

### **REMARKS**

Applicant gratefully acknowledges the allowance of claims 376-391 and 620-666, and the indication that the following claims would be allowable if rewritten in independent form: 5, 358-369, 371, 373, 416-421, 423, 424, 426-428, 431, 440, 442-445, 477-480, 506, 507, 525-530, 578-580, 583-585, 589-591, 605, 606 and 614. Applicant believes that the recitation of claim "5" is in error. The claims have been amended in a manner believed to render them allowable.

### **Interview Summary**

During a telephone interview with the examiner, Applicant inquired whether the examiner would allow claim 603 if it was amended as it appears in the current amendments. The examiner indicated that it was likely that he would find the claim to be allowable with such amendment. Applicant respectfully requests consideration and allowance of amended claim 603 and claims depending therefrom.

### **Rejections under 35 U.S.C. § 112**

The examiner rejected claims 667-671 as indefinite for depending from claim 690, which was not in the application. Claims 667-671 have been amended in a manner believed to overcome the rejection.

### **Rejections Under 35 U.S.C. § 102**

The examiner rejected claims 329, 334, 335, 339-341, 343, 346, 347, 349, 350, 352-357, 370 and 372 as anticipated by House. According to the examiner, House's teaching of "about 6 ppb" anticipates the claimed combination, which requires "about 7.5 ppb" water soluble polymer.

As specified in MPEP 2131.03 III., "Anticipation under § 102 can be found only when the reference discloses **exactly** what is claimed and [that] where there are differences between the reference disclosure and the claim, the rejection must be based on § 103 which take differences into account." (Emphasis added). The examiner has not established a teaching of every limitation of claim 329 and claims depending therefrom in House. Applicant respectfully requests that the rejection of claim 329 as anticipated be withdrawn.

The examiner has not issued an alternative obviousness rejection over House. In anticipation of such a rejection, Applicant incorporates by reference all of the arguments previously made with respect to House.

For all of the reasons previously discussed, the examiner has not pointed to a teaching in House of a water based drilling fluid wherein a water soluble polymer, a surfactant, and an [association between the surfactant and the water soluble polymer], provide [the] water based drilling fluid with effective rheology and fluid loss control properties. Claim 329, emphasis added. *Crown Operations Int'l Ltd. v. Solutia Inc.*, 62 U.S.P.Q.2d 1917, 1922-1923 (Fed Cir. 2002).

**Rejection of claims 329-338 and 341-357 as obvious over Sydansk**

The examiner also rejected claims 329-338, 341-357 as obvious over U.S. Patent No. 5,513,712 to Sydansk ("Sydansk").

Sydansk is directed to a "polymer enhanced foam," which is an aerated fluid. *See, e.g.* abstract. Claim 329 has been amended to clarify that "said water based drilling fluid [is] non-aerated." As explained in the specification, "[c]urrent under-balanced drilling technologies use air, foams and aerated fluids. These air-based technologies solve some of the problems

encountered drilling in under-balanced conditions; however, air based technologies are very costly." Specification p. 2, ll. 3-5.

The examiner has not pointed to a teaching or suggestion of the claimed non-aerated fluid in Sydansk, and has not pointed to an expectation that a non-aerated fluid having the composition described in Sydansk would be an effective drilling fluid. The examiner therefore has not pointed to either (1) a teaching or suggestion of the invention, or (2) an expectation of its success. *In re Vaeck*, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). See also MPEP 2143. Nor has the examiner pointed to a teaching or suggestion that would motivate a person of ordinary skill in the art to modify Sydansk in order to produce the claimed non-aerated fluid. In order to establish *prima facie* obviousness, the examiner has the burden to point to a teaching or suggestion in the references themselves that it would be desirable to make such a modification. MPEP 2143.01; *In re Brouwer*, 37 U.S.P.Q.2d 1663, 1666 (Fed. Cir. 1995).

The examiner has not met this burden. Applicant respectfully requests reconsideration and allowance of claims 329-357.

#### **Rejection of Claims as Obvious over House**

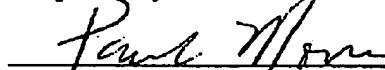
The examiner rejected a number of claims from 413-619 as obvious over House. The claims have been amended to depend from allowable base claims, and are believed to be in allowable form.

#### **CONCLUSION**

For the foregoing reasons, applicant respectfully requests entry of the amendments submitted herewith and consideration and allowance of the pending claims. The Commissioner

is hereby authorized to charge any fees in connection with this paper, or to credit any overpayment, to Deposit Account No. 02-0429 maintained by Baker Hughes Incorporated.

Respectfully submitted,



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